

## Office of the Assistant Secretary, Interior

## § 1001.3

such contract is made with a corporation for the general benefit of the corporation.

### *Section 3—Covenant Against Contingent Fees*

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed under this compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

### *Section 4—Sovereign Immunity*

Nothing in this compact or any AFA shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the Tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
THE \_\_\_\_\_ Tribe

The Department of the Interior.

By: \_\_\_\_\_

By: \_\_\_\_\_

## **PART 1001—SELF-GOVERNANCE PROGRAM**

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AUTHORITY: 25 U.S.C. 450 note, 458aa–458gg.

SOURCE: 60 FR 8554, Feb. 15, 1995, unless otherwise noted.

### **§ 1001.1 Purpose.**

The purpose of this rule is to establish the process for tribes to apply for entry into the Self-Governance program and to establish the selection cri-

teria by which the Department will identify eligible tribes and select tribes to begin the negotiations process.

### **§ 1001.2 Applicant eligibility.**

Any tribe or consortium of tribes seeking inclusion in the applicant pool must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93–638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96–502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

(1) Legal and budgetary research; and

(2) Internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

### **§ 1001.3 Priority ranking for negotiations.**

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-

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governance option. This narrative should identify any activities that the tribe has pursued, carefully identifying and documenting the dates involved, including, but not limited to, the following:

(a) Prior planning activities related to self-governance, noting the source of funding for the planning activity and whether or not it was sanctioned by the Office of Self-Governance (OSG), including documentation as applicable.

(b) Prior efforts to secure planning and/or negotiation grants.

(c) Meetings with the OSG or other Departmental offices in which the tribe expressed an interest in participating in the Self-Governance Project.

(d) Correspondence between the tribe and the Department in which the tribe has expressed an interest in participating in the Self-Governance Project.

(e) All actions of the tribal governing body related to participating in the self-governance option.

#### § 1001.4 Application review and approval.

Upon receipt of an application, the OSG will review the package and determine whether or not it is complete. Upon determination that it is complete, the name of the tribe or consortium will be included in the official applicant pool. Incomplete submissions will be returned with the deficiencies identified. Revised applications may be resubmitted for consideration at any time.

#### § 1001.5 Application review and selection process for negotiations for funding agreements.

Upon acceptance into the applicant pool, the OSG will assign to each tribe or consortium a ranking relative to other applicants based upon the date the OSG receives the complete application package. This ranking will constitute a master list that will be maintained and updated on a continuous basis from year to year. When receipt dates are the same for two or more applications, several other factors will be considered in determining the placement of the tribe or consortium on the list. These factors are identified in priority order as follows:

(a) Designation by the Congress through report language that a tribe should be considered for participation. These designations will be considered based upon the actual language of the report.

(b) Documentation of OSG sanctioning of the tribe's self-governance planning and subsequent evidence of actual planning by the tribe.

(c) Submission of a completed planning or negotiation grant application in the previous year.

(d) A signed agreement pursuant to the Indian Health Service (IHS) self-governance project.

(e) Receipt of a planning grant awarded by the IHS.

#### § 1001.6 Submitting applications.

(a) Applications for inclusion in the applicant pool will be accepted on an on-going basis.

(b) Applications may be mailed or hand-delivered.

(c) Applications for negotiations in 1996 that are mailed must be postmarked no later than May 16, 1995.

(d) Applications must be sent to: Director, Office of Self Governance, Department of the Interior, 1849 C Street, NW., MIB RM/MS-2548, Washington, DC 20240.

#### § 1001.7 Availability, amount, and number of planning and negotiation grants.

(a) What is the purpose of this section? This section describes how to apply for planning and negotiation grants authorized by section 402(d) of the Act to help meet tribal costs incurred:

(1) In meeting the planning phase requirement of Pub. L. 103-413, including planning to negotiate non-BIA programs, services, functions and activities; and

(2) In conducting negotiations.

(b) What types of grants are available? Three categories of grants may be available:

(1) Negotiation grants for tribes/consortia selected from the applicant pool as described in § 1001.5 of these regulations;

(2) Planning grants for tribes/consortia requiring advance funding to

meet the planning phase requirement of Pub. L. 103-413; and

(3) Financial assistance for tribes/consortia to plan for negotiating for non-BIA programs, services, functions and activities, as described in §1001.10.

(c) Will grants always be made available to meet the planning phase requirement as described in section 402(d) of Pub. L. 103-413? No. Grants to cover some or all of the planning costs that a tribe/consortium may incur may be made available depending upon the availability of funds appropriated by Congress. We will publish notice of availability of grants in the FEDERAL REGISTER as described in this section.

(d) May a tribe use its own resources to meet its planning and negotiation expenses in preparation for entering into self-governance? Yes. A tribe/consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and annual funding agreement.

(e) What happens if there are insufficient funds to meet the anticipated tribal requests for planning and negotiation grants in any given year? If appropriated funds are available but insufficient to meet the total requests from tribes/consortia, we will give first priority to those that have been selected from the applicant pool to negotiate an annual funding agreement. We will give second priority to tribes/consortia that require advance funds to meet the planning requirement for entry into the self-governance program. We will give third priority to tribes/consortia that require negotiation/planning funds to negotiate for DOI non-BIA programs.

(f) How many grants will the Department make each year and what funding will be available? The number and size of grants awarded each year will depend on Congressional appropriations and tribal interest. Each year, we will publish a notice in the FEDERAL REGISTER which provides relevant details about the application process, including: The funds available, timeframes, and requirements for negotiation and advance planning specified in this part.

[61 FR 17831, Apr. 23, 1996]

**§ 1001.8 Selection criteria for tribes/consortia to receive a negotiation grant.**

(a) Who may be selected to receive a negotiation grant? Any tribe/consortium that has been accepted into the applicant pool in accordance with §1001.5 and has been selected to negotiate a self-governance annual funding agreement is eligible to apply for a negotiation grant. Each year, we will publish a notice in the FEDERAL REGISTER with all relevant details as to how tribes/consortia which have been selected can apply for negotiation grants.

(b) What must a tribe/consortium do to receive a negotiation grant?

(1) To receive a negotiation grant, a tribe/consortium must:

(i) Be selected from the applicant pool to negotiate an annual funding agreement;

(ii) Be identified as eligible to receive a negotiation grant; and

(iii) Not have received a negotiation grant within the 3 years preceding the date of the latest FEDERAL REGISTER announcement described in §1001.7.

(2) The tribe/consortium must submit a letter affirming its readiness to negotiate and formally request a negotiation grant to prepare for and negotiate a self-governance agreement. These grants are not competitive.

(c) May a selected tribe negotiate without applying for a negotiation grant? Yes. In this case, the tribe should notify us in writing so that funds can be reallocated for other grants.

[61 FR 17832, Apr. 23, 1996]

**§ 1001.9 Selection criteria for tribes/consortia seeking advance planning grant funding.**

(a) Who is eligible to apply for a planning grant that will be awarded before a tribe/consortium is admitted into the applicant pool? Any tribe/consortium that is not a self-governance tribe and needs advance funding in order to complete the planning phase requirement may apply. Tribes/consortia that have received a planning grant within 3 years preceding the date of the latest FEDERAL REGISTER announcement described in §1001.7 are not eligible.

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(b) What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements? A tribe/consortium must submit the following material:

(1) A tribal resolution or other final action of the tribal governing body indicating a desire to plan for tribal self-governance;

(2) Audits from the last 3 years which document that the tribe meets the requirement of being free from any material audit exception;

(3) A proposal that describes the tribe's/consortium's plans to conduct:

(i) Legal and budgetary research, and

(ii) Internal tribal government and organization planning;

(4) A timeline indicating when planning will start and end; and

(5) Evidence that the tribe/consortium can perform the tasks associated with its proposal (i.e., submit resumes and position descriptions of key staff or consultants to be used).

(c) How will tribes/consortia know when and how to apply for planning grants? Each year, we will publish in the FEDERAL REGISTER a notice of the availability of planning grants for additional tribes as described in § 1001.7. This notice will identify the specific details for applying.

(d) What criteria will be used to award planning grants to those tribes/consortia requiring advance funding to meet the planning phase requirement of Public Law 103-413? Advance planning grants are discretionary and based on need. The following criteria will be used to determine whether to award a planning grant to a tribe/consortium before the tribe is being selected into the applicant pool:

(1) A complete application as described in §§ 1001.9(b) and 1001.9(c);

(2) A demonstration of financial need. We will rank applications according to the percentage of tribal resources to total resources as indicated in the latest A-128 audit. We will give priority to applications that demonstrate financial need by having a lower level of tribal resources as a percent of total resources; and

(3) Other factors that demonstrate the readiness of the tribe/consortium to enter into a self-governance agreement, including previous efforts of the

tribe/consortium to participate in self-governance.

(e) Can tribes/consortia that receive advance planning grants also apply for a negotiation grant? Yes. Tribes/consortia that receive advance planning grants may submit a completed application to be included in the applicant pool. Once approved for inclusion in the applicant pool, the tribe/consortium may apply for a negotiation grant according to the process identified in § 1001.7 above.

(f) When and how will a tribe/consortium know whether it has been selected to receive an advance planning grant? Within 30 days of the deadline for submitting applications we will notify the tribe/consortium by letter whether it has been selected to receive an advance planning grant.

[61 FR 17832, Apr. 23, 1996]

### **§ 1001.10 Selection criteria for other planning and negotiating financial assistance.**

(a) What is the purpose of this section? This section describes how to apply for other financial assistance for planning and negotiating of a DOI non-BIA program, service, function or activity that may be available, as well as the selection process.

(b) Are there other funds that may be available to self-governance tribes/consortia for planning and negotiating with DOI non-BIA bureaus? Yes. Tribes/consortia may contact the Director, Office of Self-Governance to determine if funds are available for the purpose of planning and negotiating with DOI non-BIA bureaus under this section. A tribe/consortium may also request information from a DOI non-BIA bureau on any funds which may be available from that bureau.

(c) Who is eligible to apply for financial assistance to plan and negotiate for a DOI non-BIA program? Any existing self-governance tribe/consortium is eligible.

(d) Under what circumstances may planning and negotiation financial assistance be made available to tribes/consortia? At the discretion of the Director, grants may be awarded when requested by the tribe and coordinated with the DOI non-BIA agency involved.

(e) How does the tribe/consortium apply for a grant to plan and negotiate for a DOI non-BIA program? When such funds are available, we will publish a notice of their availability and a deadline for submitting applications for such grants in the FEDERAL REGISTER as indicated in §1001.7.

(f) What must be included in the application? The application must include the following:

(1) The tribal resolution or other final action of the tribal governing body indicating that the tribe/consortium intends to negotiate for a DOI non-BIA program;

(2) A copy of the proposal or summary that was submitted to the DOI non-BIA bureau;

(3) A time line indicating when planning will begin and end;

(4) The planning resources from all other sources that are approved and/or anticipated for the planning activity; and

(5) The amount requested and a justification of why it is needed by the tribe/consortium.

(g) What criteria will we use to award grants to those tribes/consortia requesting financial assistance to plan and negotiate for a DOI non-BIA program? The award of such grants is discretionary. After consulting with the requesting tribe/consortium and the appropriate DOI non-BIA bureau, the Director will determine whether to award a grant to plan and negotiate for a DOI non-BIA program. The determination will be based upon the complexity of the project, the availability of resources from all other sources, and the relative need of the tribe/consortium to receive such funds for the successful completion of the planning and negotiating activity, as determined by the percentage of tribal resources to total resources as indicated in the latest A-128 audit. All decisions to award or not to award grants as described in paragraphs (e) and (f) of this section are final for the Department.

[61 FR 17832, Apr. 23, 1996]